

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDREAS BATISTA  
(A29370019)

Plaintiff,

-against-

ANDREA QUARANTILLO, District Director,  
New York District Office, United States  
Citizenship & Immigration Services and  
UNITED STATES CITIZENSHIP &  
IMMIGRATION SERVICES,

Defendants.

**07 CV 7439**

COMPLAINT

07 Civ.

ECF CASE

Plaintiff Andreas Batista, by his undersigned attorney, alleges as follows:

1. This is an action for a judicial determination on a pending naturalization application that has not been adjudicated within the time required by law. In the alternative, this is an action in the nature of mandamus and/or for declaratory and injunctive relief to compel agency action that has been unlawfully withheld and unreasonably delayed. The action arises under the Immigration & Nationality Act of 1952, as amended (the "Act"), 8 U.S.C. §§ 1101 et seq. and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq. Subject matter jurisdiction is based upon 8 U.S.C. § 1447, 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. § 1361. This Court may grant relief pursuant to the Act, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., and 28 U.S.C. § 1361.

2. Plaintiff Andreas Batista ("plaintiff" or "Mr. Batista") is a lawful permanent resident of the United States with a residence address at 155 E. 76<sup>th</sup> Street, New York, New York 10021.

3. Defendant Andrea Quarantillo is the District Director for the New York District Office of United States Citizenship & Immigration Services with responsibility for the grant and denial of naturalization applications filed by residents of the Southern District of New York pursuant to 8 U.S.C. §§ 1421, 1427. Defendant Quarantillo routinely transacts business in the Southern District of New York and maintains an office at 26 Federal Plaza, New York, New York 10278 where examinations on naturalization applications are conducted and naturalization applications are adjudicated.

4. Defendant United States Citizenship & Immigration Services ("USCIS") is made a party defendant for purposes of obtaining declaratory and injunctive relief pursuant to the APA and the Declaratory Judgment Act.

5. On or about August 3, 2004, Mr. Batista filed a naturalization application with USCIS and by notice dated April 2005, a copy of which is attached as Exhibit A, appeared for an interview on this application 26 Federal Plaza, New York, New York. This examination was conducted in accordance with Section 335 of the Act, 8 U.S.C. § 1446. Mr. Batista passed the English language, American history, and United States government sections of the examination, as shown by the Naturalization Interview Results for his examination, a copy of which is attached as Exhibit B. Under Section 336 of the Act, 8 U.S.C. § 1447, USCIS was required to grant or deny Mr. Batista's naturalization application within 120 days of the date of the August 18, 2005 interview. To date, despite repeated inquiries no decision has been rendered on this application and some two years have now elapsed since the date of the interview.

#### COUNT ONE

6. Paragraphs 1 through 5 above are repeated and realleged as though fully set forth herein.

7. Mr. Batista has satisfied all the prerequisites for naturalization and USCIS has failed to grant or deny his naturalization application within 120 days of the examination and over two years have now passed since the interview on his naturalization application on August 18, 2005.

8. Under Section 336(b) of the Act, 8 U.S.C. § 1447(b), Mr. Batista should be granted a hearing on his naturalization application by this Court and should be naturalized.

#### COUNT TWO

9. Paragraphs 1 through 5 above are repeated and realleged as though fully set forth herein.

10. The continuing failure of USCIS to take the action required by law on Mr. Batista's naturalization application violates the Act and the APA, 5 U.S.C. § 555(b). Under the APA, 5 U.S.C. § 706(1), this Court has the power to compel agency action unlawfully withheld or unreasonably delayed. In addition, the continuing failure of USCIS to take action required by law is subject to correction by mandamus under 28 U.S.C. § 1361.

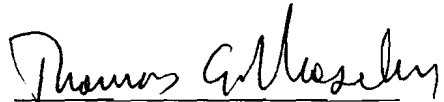
WHEREFORE, the plaintiff Andreas Batista demands judgment:

(a) Granting him a hearing before this Court on his naturalization application and declaring that he is entitled to be naturalized, or, in the alternative,

(b) Ordering defendants to grant or deny his naturalization application forthwith,

(c) Granting him costs and attorneys fees and such other and further relief that  
this Court may deem proper.

Dated: Newark, New Jersey  
August 20, 2007




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EXHIBT A



Request for Applicant to Appear for Naturalization Initial Interview			NOTICE DATE April 20, 2005
CASE TYPE N400 Application For Naturalization			INS A# A 029 370 019
APPLICATION NUMBER ESC*001284793	RECEIVED DATE August 03, 2004	PRIORITY DATE August 03, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS ANDRES BATISTA c/o TOMAS E MOSELEY ONE GATEWAY CENTER SUITE 2600 NEWARK NJ 07102  llllllllllllllll		<b>Please come to:</b> USCIS MANHATTAN CENTER 26 FEDERAL PLAZA USCIS 7TH FLOOR ROOM RM7-700 MAIN ROOM NEW YORK NY 10278 <b>On (Date):</b> Thursday, August 18, 2005 <b>At (Time):</b> 08:25 AM	
<p>You are hereby notified to appear for an interview on your Application for Naturalization at the date, time, and place indicated above. <b>Waiting room capacity is limited. Please do not arrive any earlier than 30 minutes before your scheduled appointment time.</b> The proceeding will take about two hours. If for any reason you cannot keep this appointment, return this letter immediately to the INS office address listed below with your explanation and a request for a new appointment; otherwise, no further action will be taken on your application.</p> <p>If you are applying for citizenship for yourself, you will be tested on your knowledge of the government and history of the United States. You will also be tested on reading, writing, and speaking English, unless on the day you filed your application, you have been living in the United States for a total of at least 20 years as a lawful permanent resident and are over 50 years old, or you have been living in the United States for a total of 15 years as a lawful permanent resident and are over 55 years old, or unless you have a medically determinable disability (you must have filed form N648 Medical Certification for Disability Exception, with your N400 Application for Naturalization).</p> <p><b>You MUST BRING the following with you to the interview:</b></p> <ul style="list-style-type: none"><li>• This letter.</li><li>• Your Alien Registration Card (green card).</li><li>• Any evidence of Selective Service Registration.</li><li>• Your passport and/or any other documents you used in connection with any entries into the United States.</li><li>• Those items noted below which are applicable to you:</li></ul> <p>If applying for NATURALIZATION AS THE SPOUSE of a United States Citizen;</p> <ul style="list-style-type: none"><li>• Your marriage certificate.</li><li>• Proof of death or divorce for each prior marriage of yourself or spouse.</li><li>• Your spouse's birth or naturalization certificate or certificate of citizenship.</li></ul> <p>If applying for NATURALIZATION as a member of the United States Armed Forces;</p> <ul style="list-style-type: none"><li>• Your discharge certificate, or form DD 214.</li></ul> <p>If copies of a document were submitted as evidence with your N400 application, the originals of those documents should be brought to the interview.</p> <p><b>PLEASE keep this appointment, even if you do not have all the items indicated above.</b></p>			
If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.			
INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE USCIS 7TH FLOOR ROOM 7-700 26 FEDERAL PLAZA NEW YORK NY 10278-		INS Customer Service Number: (800) 375-5283  REPRESENTATIVE COPY 	

**EXHIBT B**

U.S. Department of Justice  
Immigration and Naturalization Service

## Naturalization Interview Results

A#: A 029 370 019

On AUG 18 2005, you were interviewed by INS officer DANIEL J. BYRD.

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the test of U.S. history and government and the English language requirement was waived.
- ☐ The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to \_\_\_\_\_ speak / \_\_\_\_\_ read / \_\_\_\_\_ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on the Form N-14.
- ☒ INS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your \_\_\_\_\_ English ability / \_\_\_\_\_ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.

A) \_\_\_\_\_ **Congratulations! Your application has been recommended for approval.** At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) \_\_\_\_\_ **A decision cannot yet be made about your application.**

**It is very important that you:**

- ✓ Notify INS if you change your address.
- ✓ Come to any scheduled interview.
- ✓ Submit all requested documents.
- ✓ Send any questions about this application in writing to the officer named above. Include your full name, A-number, and a copy of this paper.
- ✓ Go to any oath ceremony that you are scheduled to attend.
- ✓ Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath ceremony. Include a copy of this paper and a copy of the scheduling notice.